UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 15 2009

REPLY TO THE ATTENTION OF:
AR-18J

Don Smith, P.E.,
Manager
Air Quality Permits Section
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Dear Mr. Smith:

This letter is in response to your letters dated September 17 and October 2, 2009, requesting the U.S. Environmental Protection Agency's concurrence on the approach used the Minnesota Pollution Control Agency (MPCA) in calculating potential to emit (PTE) for a spray booth at the Metro Transit (Metro Transit) Light Rail Operation and Maintenance Facility (Facility) located in Minneapolis, Minnesota. The request arises from Metro Transit's disagreement with the methodology used by MPCA in calculating the PTE for the Facility. As detailed below, EPA concurs with MPCA's PTE analysis for the spray booth coating operations.

Background to "Potential to Emit" Requirements

PTE is defined in 40 C.F.R. 52.21(b)(4) as:

> [T]he maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

The application of the above definition was addressed by the District Court of Colorado in the 1998 decision *United States v. Louisiana-Pacific Corporation*, 682 F. Supp. 1141 (Dist. Ct. Co. 1998). There, the court held that:

> [N]ot all federally enforceable restrictions are properly considered in the calculation of a source's potential to emit. While restrictions on hours of operation and on the amount of materials combusted or produced are properly included, blanket restrictions on actual emissions are not.

682 F. Supp. at 1133.

In response to the *Louisiana-Pacific* decision, EPA issued guidance in 1989 which continues to apply to PTE analyses. The June 13, 1989 guidance, captioned "Guidance on Limiting Potential to Emit in New Source Permitting" (1989 Guidance), provides in pertinent part as follows:

> To appropriately limit potential to emit consistent with the opinion in *Louisiana-Pacific*, all permits issued pursuant to 40 C.F.R. Sections 51.160, 51.166, 52.21 and 51.165 must contain a production or operational limitation in addition to the emission limitation in cases where the emission limitation does not reflect the maximum emissions of the source operating at full design capacity without pollution control equipment. Restrictions on production or operation that will limit potential to emit include limitations on quantities of raw materials consumed, fuel combusted, hours of operation, or conditions which specify that the source must install and maintain controls that reduce emissions to a specified emission rate or to a specified efficiency level. . . . When permits contain production or operational limits, they should also have recordkeeping requirements that allow a permitting agency to verify a source's compliance with its limits.

1989 Guidance at 5-6.

EPA guidance has also recognized that certain sources emit less than their PTE. *See*, for example, D. Berry, "Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound (VOC) Use," October 15, 1993 (1993 Guidance); J. Seitz and R. Van Heuvelen, "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act," January 25, 1995 (1995 Guidance); J. Seitz and E. Schaeffer, "Potential to Emit Guidance for Specific Source Categories," April 14, 1998 (1998 Guidance). These guidance documents specify numerous rulemaking and permitting options available to permitting authorities to establish legally and practically enforceable PTEs, including, federally enforceable state operating permit programs, general permits, and state implementation plan revisions. The 1995 Guidance at page 8 also notes that:

> The EPA intends, within its resource constraints, to issue technical assistance in this area by providing information on the type of operational limits that may be considered acceptable to limit the potential to emit for certain individual small source categories.

However, as of this date, EPA has not issued any technical assistance or specific guidance that directly pertains to spray booth coating operations.

Summary of MPCA's PTE Analysis

In your September 17, 2009 letter, you describe the methodology that MPCA used to determine the volatile organic compound (VOC) PTE of the Facility. Specifically, MCPA assumed the following:

1. The spray booth is operated at the maximum capacity, as determined by the number and capacity of the spray guns;
2. The spray booth is operated with the coating with the highest VOC content; and
3. The spray booth is operated 8760 hours per year.

With the above assumptions, the MPCA calculated the VOC PTE using the following formula:

$$\text{VOC PTE} = \frac{\text{spray booth capacity in gallons per hour} \times \text{VOC content in pounds per gallon} \times 8760 \text{ hours per year}}{2000 \text{ pounds per ton}}$$

EPA agrees that this is the appropriate methodology to determine PTE of a spray booth because there is no federally enforceable or practically and legally enforceable limitation on the Facility's spray booth nor is there any in-place control equipment.

Metro Transit's Position

It is our understanding that Metro Transit asserts that its current fleet size, the types and quantities of coatings that it proposes to use, and the expected drying and curing times, all serve to create sufficient limitations on its potential emissions without any additional practically and legally enforceable limitation, such as a permit. However, as responsible permitting authorities, neither EPA nor MPCA can simply assume that the emissions from a proposed facility will be the same as what a current owner or operator expects the facility will emit based on the currently proposed use of the facility, where that facility is capable of significantly greater usage and emissions. In the future, Metro Transit, or a subsequent owner or operator, may paint more cars (if, e.g., the light rail line expands), or may choose to use alternative coatings with higher VOC content or shorter drying and curing times. The proposed spray booth operation is capable of accommodating these changes, as well as many others. Therefore, without practically and legally enforceable limitations on such matters as fleet size, the types of coating, quantity of coating or the drying and curing time, the PTE must be calculated at the maximum capacity of the stationary source to emit a pollutant.

Conclusion

In conclusion, EPA concurs with MPCA's methodology for determining the Facility's PTE given the absence of any practically enforceable state implementation plan limitations or permit limitations. If you have any questions, please call Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely,

Pamela Blakley

Pamela Blakley, Chief
Air Permits Section